

ORIGINAL

1 SEAN T. PROSSER (CA SBN 163903)
2 SProsser@mofo.com
3 JAMES MANISCALCO (CA SBN 179386)
4 JManiscalco@mofo.com
5 MORRISON & FOERSTER LLP
6 555 West Fifth Street
7 Los Angeles, California 90013-1024
8 Telephone: 213.892.5200
Facsimile: 213.892.5454

7 Attorneys for Defendants VESTIN REALTY
MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC,
and VESTIN MORTGAGE, INC.

FILED
06 NOV 16 PM 4:02
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
PDC
DEPUTY

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 RICHARD G. GENTON, TRUSTEE OF THE
13 RICHARD G. GENTON LIVING TRUST
14 DATED 06/05/01; MARIO O. LOPEZ AND
15 ALICIA L. LOPEZ, TRUSTEES OF THE
16 LOPEZ FAMILY TRUST DATED 12/14/88;
CHARLES M. FELTON AND SHARON D.
17 FELTON, TRUSTEES OF THE FELTON
FAMILY TRUST DATED 03/25/99; MARY P.
18 FELTON, TRUSTEE OF THE MARY P.
FELTON TRUST, DATED 11/03/04;
MARLOWE J. LANCASTER AND SHIRLEY C.
19 LANCASTER, TRUSTEES OF THE
LANCASTER FAMILY TRUST DATED
06/27/90; RONALD LIGHTERINK; SHERON
LIGHTERINK; LUIS G. GUERRERO AND
EMILIA GUERRERO, TRUSTEES OF THE
GUERRERO FAMILY TRUST DATED
12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
LIVING TRUST DATED 09/14/99; RALPH H.
MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIE TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN; JOYCE
B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
THE JOBST FAMILY TRUST DATED
06/17/94; JOSEPH M. AMORIN; EMMET A.
SJOBERG AND MARY M. SJOBERG,
TRUSTEES OF THE EMMET A. AND MARY
M. SJOBERG TRUST DATED 05/02/95;

10 Case No. 06 CV 2517 BEN WMC
11 NOTICE OF REMOVAL
12 PURSUANT TO 28 U.S.C. § 1441
13 BY DEFENDANTS VESTIN
14 REALTY MORTGAGE II, INC.
(F/K/A) VESTIN FUND II, LLC,
15 AND VESTIN MORTGAGE, INC.

1 MICHAEL E. COX; FRANCIS COX; DERELL
2 L. HARMON; DENISE L. HARMON; JOAN L.
3 MILLER; DONALD G. MILLER; STAN J.
4 PROGAR; MAUREEN C. PROGAR; JANE
5 HALPERN; TODD E. STERLING; CLYDE
6 MERRITT; DARLENE MERRITT; and ROES 1
7 through 5000, inclusive,
8
9

Plaintiffs,

v.

7 VESTIN REALTY MORTGAGE II, INC.,
8 (f/k/a) VESTIN FUND II, LLC, VESTIN
9 MORTGAGE, INC., and DOES 1 through 50,
Inclusive,

10 Defendants.

11
12 TO PLAINTIFFS, THEIR ATTORNEYS OF RECORD, AND THE CLERK OF
13 THE ABOVE-ENTITLED COURT:

14 PLEASE TAKE NOTICE that defendants VESTIN REALTY MORTGAGE
15 II, INC. (f/k/a) VESTIN FUND II, LLC, and VESTIN MORTGAGE, INC.
16 ("Vestin") hereby remove this action from the Superior Court of California, County
17 of San Diego to the United States District Court for the Central District of
18 California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 & 1453. The grounds for
19 removal are as follows:

20 **PROCEDURAL HISTORY**

21 1. On October 13, 2006, the above-captioned Plaintiffs filed a civil action
22 in the Superior Court of California for San Diego County, entitled *Genton v. Vestin*
23 *Realty Mortgage II, Inc.* (Case No. GIC 873968) (the "Superior Court Action"). A
24 true copy of the complaint in the Superior Court Action is attached as Exhibit "A."

25 2. On or about October 19, 2006, Plaintiffs served the Superior Court
26 Action on Vestin. True and correct copies of the summons received by Vestin are
27 attached as Exhibit "B."

28 VESTIN'S NOTICE OF REMOVAL

1 3. On November 9, 2006, Plaintiffs filed their First Amended Complaint
2 ("FAC") in the above-entitled action. A true copy of the FAC is attached as Exhibit
3 "C."¹

4 **TIMELINESS OF REMOVAL**

5 4. Vestin first received formal notice of the Superior Court Action,
6 through service of the summons and complaint on Vestin's registered agent for
7 service of process, on October 19, 2006.

8 5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), because
9 it has been filed within 30 days of service upon Vestin of the summons and
10 complaint.

11 **VENUE IN THE SOUTHERN DISTRICT**

12 6. Vestin files this Notice of Removal with the United States District
13 Court for the Southern District of California because Plaintiffs allege that the
14 Superior Court Action arose in the County of San Diego. (FAC ¶¶ 3-4, 27-28.)

15 **BASIS FOR REMOVAL JURISDICTION**

16 7. Generally. The Superior Court Action is removable to this Court
17 pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2,
18 119 Stat. 4 (codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b)) for at
19 least the following reasons:

20 8. Covered Class Action. Plaintiffs purport to prosecute the Superior
21 Court Action on behalf of a class of "all Vestin Fund II investors who voted against
22 the 'Roll-Up', whereby Vestin Fund II merged into Vestin Realty II." (FAC ¶ 33.)
23 Plaintiffs allege that "there are at least 1000 members of the proposed class." (FAC
24 ¶ 34.) *See* 28 U.S.C. §§ 1332(d)(1) & (2), 1453(a) & (b).

25 9. Diversity. The Superior Court Action satisfies the minimum diversity
26 requirements of CAFA, 28 U.S.C. § 1332(d)(2)(A), for the following reasons:

27

¹ As of the date of this filing, Defendants had not yet been served with the FAC.

1 a. Defendant Vestin Realty Mortgage II, Inc. (f/k/a) Vestin Fund
2 II, LLC ("Vestin Realty Mortgage II") is a publicly traded real estate investment
3 trust. It is a corporation organized and existing under the laws of the State of
4 Maryland with its principal place of business located in Las Vegas, Nevada.

5 b. Defendant Vestin Mortgage, Inc. is a corporation organized and
6 existing under the laws of the State of Nevada and is licensed there as a mortgage
7 broker.

8 c. Plaintiffs allege that the individual members of the purported
9 class are residents of California, Nevada, Texas, Washington, Wisconsin, Montana,
10 Rhode Island, New York, and New Mexico. (FAC ¶¶ 6-26.)

11 10. Matter in Controversy. This amount in controversy of this action
12 exceeds \$5,000,000 and thereby satisfies the minimum amount in controversy for
13 removal under 28 U.S.C. § 1332(d)(2). Plaintiffs allege that they suffered
14 "substantial investment losses" (FAC ¶ 37) and have brought causes of action for
15 breach of contract, breach of the implied covenant of good faith and fair dealing,
16 and elder abuse pursuant to California Civil Code § 1761. (FAC ¶¶ 41-52.) While
17 Plaintiffs do not explicitly alleged the value of the matter in controversy, they are
18 seeking compensatory damages, punitive and exemplary damages (including treble
19 damages for elder abuse) and attorneys' fees as a result of their investment losses
20 and resulting harm. (*Id.*) A fair reading of the FAC demonstrates that the amount in
21 controversy exceeds the jurisdictional minimum for removal.

22 11. No CAFA Exclusions. The Superior Court Action does not fall within
23 any of the exclusions to the removal jurisdiction recognized by 28 U.S.C. § 1332(d)
24 because Vestin is not a citizen of California, the state in which the Superior Court
25 Action was originally filed.

26 ///

27 ///

1 **NOTICE PROVIDED TO STATE COURT AND ADVERSE PARTIES**

2 12. Vestin is filing, on the date of this Notice, a copy of this Notice of
3 Removal in the Superior Court of California, County of San Diego and will provide
4 written notice of this Notice of Removal to Plaintiffs, as required by 28 U.S.C.
5 §§ 1446(d) & 1453(b). True and correct copies of the Notice to the Clerk of San
6 Diego County Superior Court of Removal to Federal Court (without exhibits) and
7 the Notice to Plaintiffs of Removal to Federal Court (without exhibits) that will be
8 filed with the San Diego County Superior Court are attached hereto as Exhibits "D"
9 and "E."

10 13. In filing this Notice of Removal, Vestin does not waive any defenses
11 that may be available to it in this action.

12 **CONCLUSION**

13 14. Vestin respectfully requests that this Court exercise subject matter
14 jurisdiction over the Superior Court Action; enter such orders and grant relief as
15 may be necessary to secure removal and to prevent further proceedings in the
16 Superior Court of California, County of San Diego; and grant to Vestin such further
17 relief as is necessary to secure this Court's jurisdiction.

18 Dated: November 16, 2006

19 SEAN T. PROSSER
20 JAMES P. MANISCALCO
21 MORRISON & FOERSTER LLP

22 By: *James P. Maniscalco by KSL*
23 James P. Maniscalco

24 Attorneys for Defendants
25 VESTIN REALTY MORTGAGE II,
26 INC., (f/k/a) VESTIN FUND II, LLC,
27 and VESTIN MORTGAGE, INC.

1 **CERTIFICATE OF SERVICE BY MAIL**
2 (Fed. R. Civ. Proc. rule 5(b))

3 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose
4 address is 12531 High Bluff Drive, San Diego, California 92130; I am not a party to the
5 within cause; I am over the age of eighteen years and I am readily familiar with
6 Morrison & Foerster's practice for collection and processing of correspondence for
7 mailing with the United States Postal Service and know that in the ordinary course of
8 Morrison & Foerster's business practice the document described below will be deposited
9 with the United States Postal Service on the same date that it is placed at Morrison &
10 Foerster with postage thereon fully prepaid for collection and mailing.

11 I further declare that on the date hereof I served a copy of:

12 **NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441 BY DEFENDANTS**
13 **VESTIN REALTY MORTGAGE II, INC. (F/K/A) VESTIN FUND II, LLC, AND**
14 **VESTIN MORTGAGE, INC.**

15 on the following by placing a true copy thereof enclosed in a sealed envelope addressed as
16 follows for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive,
17 San Diego, California 92130, in accordance with Morrison & Foerster's ordinary
18 business practices:

19 Attorneys for Plaintiffs

20 Erwin J. Shustak, Esq.
21 Thomas C. Frost, Esq.
22 John Cleary, Esq.
23 SHUSTAK & PARTNERS, P.C.
24 401 West "A" Street, Suite 2330
25 San Diego, CA 92101
26 Telephone: (619) 696-9500
27 Facsimile: (619) 615-5290

28 I declare under penalty of perjury that the above is true and correct.

19 Executed at San Diego, California, this 16th day of November, 2006.

20 _____
21 Stacy Vinagre
22 _____
23 (typed)

24 _____
25 _____
26 _____
27 _____
28 _____
29 _____
30 _____
31 _____
32 _____
33 _____
34 _____
35 _____
36 _____
37 _____
38 _____
39 _____
40 _____
41 _____
42 _____
43 _____
44 _____
45 _____
46 _____
47 _____
48 _____
49 _____
50 _____
51 _____
52 _____
53 _____
54 _____
55 _____
56 _____
57 _____
58 _____
59 _____
60 _____
61 _____
62 _____
63 _____
64 _____
65 _____
66 _____
67 _____
68 _____
69 _____
70 _____
71 _____
72 _____
73 _____
74 _____
75 _____
76 _____
77 _____
78 _____
79 _____
80 _____
81 _____
82 _____
83 _____
84 _____
85 _____
86 _____
87 _____
88 _____
89 _____
90 _____
91 _____
92 _____
93 _____
94 _____
95 _____
96 _____
97 _____
98 _____
99 _____
100 _____
101 _____
102 _____
103 _____
104 _____
105 _____
106 _____
107 _____
108 _____
109 _____
110 _____
111 _____
112 _____
113 _____
114 _____
115 _____
116 _____
117 _____
118 _____
119 _____
120 _____
121 _____
122 _____
123 _____
124 _____
125 _____
126 _____
127 _____
128 _____
129 _____
130 _____
131 _____
132 _____
133 _____
134 _____
135 _____
136 _____
137 _____
138 _____
139 _____
140 _____
141 _____
142 _____
143 _____
144 _____
145 _____
146 _____
147 _____
148 _____
149 _____
150 _____
151 _____
152 _____
153 _____
154 _____
155 _____
156 _____
157 _____
158 _____
159 _____
160 _____
161 _____
162 _____
163 _____
164 _____
165 _____
166 _____
167 _____
168 _____
169 _____
170 _____
171 _____
172 _____
173 _____
174 _____
175 _____
176 _____
177 _____
178 _____
179 _____
180 _____
181 _____
182 _____
183 _____
184 _____
185 _____
186 _____
187 _____
188 _____
189 _____
190 _____
191 _____
192 _____
193 _____
194 _____
195 _____
196 _____
197 _____
198 _____
199 _____
200 _____
201 _____
202 _____
203 _____
204 _____
205 _____
206 _____
207 _____
208 _____
209 _____
210 _____
211 _____
212 _____
213 _____
214 _____
215 _____
216 _____
217 _____
218 _____
219 _____
220 _____
221 _____
222 _____
223 _____
224 _____
225 _____
226 _____
227 _____
228 _____
229 _____
230 _____
231 _____
232 _____
233 _____
234 _____
235 _____
236 _____
237 _____
238 _____
239 _____
240 _____
241 _____
242 _____
243 _____
244 _____
245 _____
246 _____
247 _____
248 _____
249 _____
250 _____
251 _____
252 _____
253 _____
254 _____
255 _____
256 _____
257 _____
258 _____
259 _____
260 _____
261 _____
262 _____
263 _____
264 _____
265 _____
266 _____
267 _____
268 _____
269 _____
270 _____
271 _____
272 _____
273 _____
274 _____
275 _____
276 _____
277 _____
278 _____
279 _____
280 _____
281 _____
282 _____
283 _____
284 _____
285 _____
286 _____
287 _____
288 _____
289 _____
290 _____
291 _____
292 _____
293 _____
294 _____
295 _____
296 _____
297 _____
298 _____
299 _____
300 _____
301 _____
302 _____
303 _____
304 _____
305 _____
306 _____
307 _____
308 _____
309 _____
310 _____
311 _____
312 _____
313 _____
314 _____
315 _____
316 _____
317 _____
318 _____
319 _____
320 _____
321 _____
322 _____
323 _____
324 _____
325 _____
326 _____
327 _____
328 _____
329 _____
330 _____
331 _____
332 _____
333 _____
334 _____
335 _____
336 _____
337 _____
338 _____
339 _____
340 _____
341 _____
342 _____
343 _____
344 _____
345 _____
346 _____
347 _____
348 _____
349 _____
350 _____
351 _____
352 _____
353 _____
354 _____
355 _____
356 _____
357 _____
358 _____
359 _____
360 _____
361 _____
362 _____
363 _____
364 _____
365 _____
366 _____
367 _____
368 _____
369 _____
370 _____
371 _____
372 _____
373 _____
374 _____
375 _____
376 _____
377 _____
378 _____
379 _____
380 _____
381 _____
382 _____
383 _____
384 _____
385 _____
386 _____
387 _____
388 _____
389 _____
390 _____
391 _____
392 _____
393 _____
394 _____
395 _____
396 _____
397 _____
398 _____
399 _____
400 _____
401 _____
402 _____
403 _____
404 _____
405 _____
406 _____
407 _____
408 _____
409 _____
410 _____
411 _____
412 _____
413 _____
414 _____
415 _____
416 _____
417 _____
418 _____
419 _____
420 _____
421 _____
422 _____
423 _____
424 _____
425 _____
426 _____
427 _____
428 _____
429 _____
430 _____
431 _____
432 _____
433 _____
434 _____
435 _____
436 _____
437 _____
438 _____
439 _____
440 _____
441 _____
442 _____
443 _____
444 _____
445 _____
446 _____
447 _____
448 _____
449 _____
450 _____
451 _____
452 _____
453 _____
454 _____
455 _____
456 _____
457 _____
458 _____
459 _____
460 _____
461 _____
462 _____
463 _____
464 _____
465 _____
466 _____
467 _____
468 _____
469 _____
470 _____
471 _____
472 _____
473 _____
474 _____
475 _____
476 _____
477 _____
478 _____
479 _____
480 _____
481 _____
482 _____
483 _____
484 _____
485 _____
486 _____
487 _____
488 _____
489 _____
490 _____
491 _____
492 _____
493 _____
494 _____
495 _____
496 _____
497 _____
498 _____
499 _____
500 _____
501 _____
502 _____
503 _____
504 _____
505 _____
506 _____
507 _____
508 _____
509 _____
510 _____
511 _____
512 _____
513 _____
514 _____
515 _____
516 _____
517 _____
518 _____
519 _____
520 _____
521 _____
522 _____
523 _____
524 _____
525 _____
526 _____
527 _____
528 _____
529 _____
530 _____
531 _____
532 _____
533 _____
534 _____
535 _____
536 _____
537 _____
538 _____
539 _____
540 _____
541 _____
542 _____
543 _____
544 _____
545 _____
546 _____
547 _____
548 _____
549 _____
550 _____
551 _____
552 _____
553 _____
554 _____
555 _____
556 _____
557 _____
558 _____
559 _____
560 _____
561 _____
562 _____
563 _____
564 _____
565 _____
566 _____
567 _____
568 _____
569 _____
570 _____
571 _____
572 _____
573 _____
574 _____
575 _____
576 _____
577 _____
578 _____
579 _____
580 _____
581 _____
582 _____
583 _____
584 _____
585 _____
586 _____
587 _____
588 _____
589 _____
590 _____
591 _____
592 _____
593 _____
594 _____
595 _____
596 _____
597 _____
598 _____
599 _____
600 _____
601 _____
602 _____
603 _____
604 _____
605 _____
606 _____
607 _____
608 _____
609 _____
610 _____
611 _____
612 _____
613 _____
614 _____
615 _____
616 _____
617 _____
618 _____
619 _____
620 _____
621 _____
622 _____
623 _____
624 _____
625 _____
626 _____
627 _____
628 _____
629 _____
630 _____
631 _____
632 _____
633 _____
634 _____
635 _____
636 _____
637 _____
638 _____
639 _____
640 _____
641 _____
642 _____
643 _____
644 _____
645 _____
646 _____
647 _____
648 _____
649 _____
650 _____
651 _____
652 _____
653 _____
654 _____
655 _____
656 _____
657 _____
658 _____
659 _____
660 _____
661 _____
662 _____
663 _____
664 _____
665 _____
666 _____
667 _____
668 _____
669 _____
670 _____
671 _____
672 _____
673 _____
674 _____
675 _____
676 _____
677 _____
678 _____
679 _____
680 _____
681 _____
682 _____
683 _____
684 _____
685 _____
686 _____
687 _____
688 _____
689 _____
690 _____
691 _____
692 _____
693 _____
694 _____
695 _____
696 _____
697 _____
698 _____
699 _____
700 _____
701 _____
702 _____
703 _____
704 _____
705 _____
706 _____
707 _____
708 _____
709 _____
710 _____
711 _____
712 _____
713 _____
714 _____
715 _____
716 _____
717 _____
718 _____
719 _____
720 _____
721 _____
722 _____
723 _____
724 _____
725 _____
726 _____
727 _____
728 _____
729 _____
730 _____
731 _____
732 _____
733 _____
734 _____
735 _____
736 _____
737 _____
738 _____
739 _____
740 _____
741 _____
742 _____
743 _____
744 _____
745 _____
746 _____
747 _____
748 _____
749 _____
750 _____
751 _____
752 _____
753 _____
754 _____
755 _____
756 _____
757 _____
758 _____
759 _____
760 _____
761 _____
762 _____
763 _____
764 _____
765 _____
766 _____
767 _____
768 _____
769 _____
770 _____
771 _____
772 _____
773 _____
774 _____
775 _____
776 _____
777 _____
778 _____
779 _____
780 _____
781 _____
782 _____
783 _____
784 _____
785 _____
786 _____
787 _____
788 _____
789 _____
790 _____
791 _____
792 _____
793 _____
794 _____
795 _____
796 _____
797 _____
798 _____
799 _____
800 _____
801 _____
802 _____
803 _____
804 _____
805 _____
806 _____
807 _____
808 _____
809 _____
810 _____
811 _____
812 _____
813 _____
814 _____
815 _____
816 _____
817 _____
818 _____
819 _____
820 _____
821 _____
822 _____
823 _____
824 _____
825 _____
826 _____
827 _____
828 _____
829 _____
830 _____
831 _____
832 _____
833 _____
834 _____
835 _____
836 _____
837 _____
838 _____
839 _____
840 _____
841 _____
842 _____
843 _____
844 _____
845 _____
846 _____
847 _____
848 _____
849 _____
850 _____
851 _____
852 _____
853 _____
854 _____
855 _____
856 _____
857 _____
858 _____
859 _____
860 _____
861 _____
862 _____
863 _____
864 _____
865 _____
866 _____
867 _____
868 _____
869 _____
870 _____
871 _____
872 _____
873 _____
874 _____
875 _____
876 _____
877 _____
878 _____
879 _____
880 _____
881 _____
882 _____
883 _____
884 _____
885 _____
886 _____
887 _____
888 _____
889

GE / 320.00/

FILED
CIVIL BUSINESS OFFICE 10
CENTRAL DIVISION

2025 RELEASE UNDER E.O. 14176

• 1102 COURT
• 1106 CA

1 Erwin J. Shustak, Esq. (SBN 119152)
2 Thomas C. Frost, Esq. (SBN 185187)
3 John Cleary, Esq. (SBN 187821)
4 **SHUSTAK & PARTNERS, P.C.**
5 401 West "A" Street, Suite 2330
6 San Diego, California 92101
7 Telephone: (619) 696.9500
8 Facsimile: (619)615-5290

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

12 RICHARD GENTON; MARIO LOPEZ;
13 CHARLES FELTON; SHARON
14 FELTON; MARY P. FELTON,
15 TRUSTEE OF THE MARY P. FELTON
16 TRUST, DATED 11/03/04; MARLOWE
17 LANCASTER; SHIRLEY LANCASTER;
18 RONALD LIGHTERINK; SHERON
19 LIGHTERINK; LUIS GUERRERO;
20 EMILIA GUERRERO; DANIEL DEL
21 FRATE; MARION DEL FRATE; RALPH
H. MCBRIDE, JANET S. ANGELOFF;
THOMAS L. DUEPPEN; JOYCE B.
DUEPPEN; JOEL E. JOBST; JOSEPH M.
AMORIN; EMMET SJOBERG; MARY
SJOBERG; MICHAEL E. COX; DERELL
HARMON; DENISE HARMON; JOAN
MILLER; DONALD MILLER;
MAUREEN PROGAR; STAN PROGAR;
JANE HALPERN; TODD E. STERLING;
and ROES 1 through 5000, inclusive,

Case No.: 873968

CLASS ACTION

**COMPLAINT FOR BREACH OF
CONTRACT AGAINST VESTIN
REALTY MORTGAGE II, INC., (f/k/a)
VESTIN FUND II, LLC, AND VESTIN
MORTGAGE, INC.**

Plaintiffs

vs.

24 VESTIN REALTY MORTGAGE II, INC.,
25 (f/k/a) VESTIN FUND II, LLC, VESTIN
MORTGAGE, INC., and DOES 1 through
26 50, Inclusive,

Defendants.

SAN DIEGO SUPERIOR COURT
 Date 10-16-06 Oper Id JRN
 Case No. 6TCB73968
 Receipt No. 024611-10077
 Trans Type AF
 Allocations Amount
 BE 320.00
 Total Allocated 320.00
 Tender CK Amt 320.00
 Tender Amt
 Total Amt Paid 320.00
 Change Due 0.00

1 Plaintiffs, individually, and on behalf of all others similarly situated, allege the
2 following facts, based upon the investigation of Plaintiffs' counsel, which included, among
3 other things, witness interviews, a review of the Defendants' public documents, including
4 United States Securities and Exchange Commission ("SEC") filings, wire and press releases
5 published by and regarding Defendants, newspaper and other media reports, and information
6 readily obtainable on the Internet; Plaintiffs' counsel also reviewed Defendants'
7 correspondence with Plaintiffs, as well as the prospectuses, proxy statements, solicitation
8 letters, account opening documents, and agreements Defendants provided and entered into
9 with Plaintiffs:

10

11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This action is brought as a class action pursuant to California Code of Civil
13 Procedure Section 382, on behalf of all investors who satisfy both of the following criteria:
14 (1) the investors must have owned securities of Vestin Fund II, LLC, referred to as
15 investment "Units", at the time Vestin Fund II, LLC, merged with Vestin Realty Mortgage II,
16 Inc., on or about March 31, 2006 (the "Roll-Up"); and (2) the investors must have voted
17 against the Roll-Up of Vestin Fund II, LLC.

18 2. The Plaintiffs, individually, and on behalf of all class members, seek to pursue
19 remedies for Defendants' breach of the Vestin Fund II, LLC, Operating Agreement (the
20 "Operating Agreement"). The Operating Agreement specifically provided that, in the event
21 of a Roll-Up, Defendants must grant all investors who voted against the Roll-Up a pro-rata
22 share of the appraised net asset value of the company, but Defendants failed and refused to
23 pay all or any part of the amounts due to Plaintiffs, or to any of the class members, who all
24 voted against the Roll-Up.

25

26 **JURISDICTION AND VENUE**

27 3. Many of the acts and transactions alleged herein occurred in substantial part in
28 this Judicial District. Defendants entered into many of the agreements relating to this

1 dispute, including the Vestin Fund II, LLC, Operating Agreement, within this Judicial
2 District, and Defendants' alleged breach of the Vestin Fund II, LLC, Operating Agreement
3 occurred, in substantial part, within this Judicial District.

4 4. Defendants were licenced to conduct business, and actively conducted
5 business, within this Judicial District, at all relevant times, and Defendants maintained a
6 branch office in this Judicial District for purposes of servicing many of the class members'
7 investments in Vestin Fund II, LLC.

8 5. Plaintiffs, collectively, and on behalf of all others similarly situated, seek
9 damages in excess of the jurisdictional minimum of this Court.
10

11 **THE PARTIES**

12 6. Plaintiff RICHARD GENTON is an individual residing in Indian Wells,
13 California.

14 7. Plaintiff MARIO LOPEZ is an individual residing in Long Beach, California.

15 8. Plaintiffs CHARLES FELTON and SHARON FELTON are individuals
16 residing in Lodi, California.

17 9. Plaintiff MARY P. FELTON is an individual residing in Lodi, California.
18 Plaintiff MARY P. FELTON brings this action on her own behalf and in her capacity as
19 trustee of the MARY P. FELTON TRUST DATED 11/03/04.

20 10. Plaintiffs MARLOWE LANCASTER and SHIRLEY LANCASTER are
21 individuals residing in Novato, California.

22 11. Plaintiffs RONALD LIGHTERINK and SHERON LIGHTERINK are
23 individuals residing in La Quinta, California.

24 12. Plaintiffs LUIS GUERRERO and EMILIA GUERRERO are individuals
25 residing in Las Vegas, Nevada.

26 13. Plaintiffs DANIEL DEL FRATE and MARION DEL FRATE are individuals
27 residing in Sparks, Nevada.
28

1 14. Plaintiff RALPH H. MCBRIDE is an individual residing in San Antonio,
2 Texas.

3 15. Plaintiff JANET S. ANGELOFF is an individual residing in Marysville,
4 Washington.

5 16. Plaintiffs THOMAS L. DUEPPEN and JOYCE B. DUEPPEN are individuals
6 residing in Menomonee Falls, Wisconsin.

7 17. Plaintiff JOEL E. JOBST is an individual residing in Whitefish, Montana.

8 18. Plaintiff JOSEPH M. AMORIN is an individual residing in Cranston, Rhode
9 Island.

10 19. Plaintiff EMMET SJOBERG and MARY SJOBERG are individuals residing
11 in Oconomowoc, Wisconsin.

12 20. Plaintiff MICHAEL E. COX is an individual residing in Las Vegas, Nevada.

13 21. Plaintiffs DERELL HARMON and DENISE HARMON are individuals
14 residing in Granbury, Texas.

15 22. Plaintiffs JOAN MILLER and DONALD MILLER are individuals residing in
16 Pittsford, New York.

17 23. Plaintiffs MAUREEN PROGAR and STAN PROGAR are individuals
18 residing in Henderson, Nevada.

19 24. Plaintiff JANE HALPERN is an individual residing in Albuquerque, New
20 Mexico.

21 25. Plaintiff TODD E. STERLING is an individual residing in Las Vegas,
22 Nevada.

23 26. Defendant Vestin Fund II, LLC ("Vestin Fund II"), existed at all relevant
24 times as a Nevada limited liability company, with its principal place of business in Las
25 Vegas, Nevada. Vestin Fund II also maintained a branch office, at all relevant times, in La
26 Jolla, California. Vestin Fund II operated as an investment fund focused on mortgage loans,
27 and actively solicited investments and conducted business in San Diego, California, and in
28 various states across the country. On or about March 31, 2006, Vestin Fund II, LLC, merged

1 into a publicly traded real estate investment trust, Vestin Realty Mortgage II, a Maryland
2 corporation ("Vestin Realty II").

3 27. Defendant Vestin Realty II is a Maryland corporation with its principal place
4 of business in Las Vegas, Nevada. Vestin Realty II is the successor in interest to all
5 obligations, powers, duties, responsibilities, and interests of Vestin Fund II. Vestin Realty II
6 continues to actively solicit investments and conduct business in San Diego, California, and
7 in various states across the country, and its stock is publicly traded on the NASDAQ
8 Exchange.

9 28. Defendant Vestin Mortgage, Inc., is a Nevada corporation licensed in Nevada
10 as a mortgage broker ("Vestin Mortgage"). Vestin Mortgage is the manager of Vestin Realty
11 II, formerly known as Vestin Fund II, and also acts as Vestin Realty II's mortgage broker in
12 connection with most, if not all of the loans originated, purchased and sold by Vestin Realty
13 II.

14 29. Upon information and belief, each Defendant was the agent, employee,
15 successor in interest, and alter ego each other Defendant, and in doing the acts as herein
16 alleged, was acting within the course and scope of its authority as such with the expressed
17 and implied permission, instruction, knowledge, consent, and ratification of each other
18 Defendant.

19

20 **CLASS ACTION ALLEGATIONS**

21 30. Plaintiffs bring this action in their individual capacities, and on behalf of all
22 persons similarly situated and damaged by Defendants' wrongful conduct alleged herein.
23 Such a representative action is necessary to prevent and remedy the unlawful conduct alleged
24 herein.

25 31. This action is brought and may be properly maintained as a class action
26 pursuant to the provisions of California Code of Civil Procedure § 382. Plaintiffs bring this
27 action on behalf of themselves and all members of the class, defined as follows: all Vestin

1 Fund II investors who voted against the "Roll-Up", whereby Vestin Fund II merged into
2 Vestin Realty II, on or about March 31, 2006. Plaintiffs seek to pursue remedies for breach
3 of contract, based on Defendants' failure and refusal to offer or pay the Plaintiffs their pro-
4 rata share of the appraised net asset value of Vestin Fund II, pursuant to the Operating
5 Agreement. Excluded from the proposed class are Defendants, any entities in which any of
6 the Defendants has a controlling interest, and the officers, directors, affiliates, attorneys,
7 heirs, predecessors and successors in interest, subsidiaries, employees, agents and/or assigns
8 of any of the Defendants.

9 32. The members of the class are so numerous that joinder of all members is
10 impracticable. While the exact number of class members is unknown to Plaintiffs at this time
11 and can only be ascertained through discovery, Plaintiffs believe that there are at least 1000
12 members of the proposed class.

13 33. There is a well-defined community of interest among the members of the
14 proposed class. Plaintiffs, like all other members of the class, affirmatively voted against the
15 Roll-Up of Vestin Fund II. The Operating Agreement expressly provided that in the event of
16 a Roll-Up, each investor who voted against the Roll-Up was entitled to cash in an amount
17 equal to his/her pro-rata share of the appraised net asset value of the company.¹ A true and
18 correct copy of the Operating Agreement is attached hereto as Exhibit 1.

19 34. More specifically, Section 13.2 of the Operating Agreement provides, in
20 relevant part:

21 *"13.2 Members' Rights in a Roll-Up. If a Roll-Up is effected as to the
22 Company, the Roll-Up Entity making the offer to the Company shall offer to
each Member who votes against the Roll-Up...cash in an amount equal to the
Member's pro-rata share of the appraised Net Asset Value of the Company."*
23 Exhibit 1, Operating Agreement § 13.2, at p. A-24-A25.

24 Defendants, however, failed and refused to provide the members of the class all or any part of
25 the amounts due under the Operating Agreement. Instead, Defendants unilaterally converted
26

27 A "Roll-Up" is specifically defined in the Operating Agreement to include a merger
or conversion of the company into a real estate investment trust, such as Vestin Realty II.
28 Exhibit 1, Operating Agreement §§ 2.40-2.41, at pp. A-6, A-7.

1 the class members' Units of Vestin Fund II into an equivalent number of shares of Vestin
2 Realty II common stock, although Defendant knew, or reasonably should have known, that
3 the conversion would result in substantial investment losses to the members of the class.

4 35. As a result of Defendants' wrongful conduct alleged herein, the class members
5 have all suffered the same or similar injury. Between June 2001 and March 2006, the class
6 members purchased Units of Vestin Fund II for between \$9.60 and \$10.00 per Unit. As of
7 the date of the Roll-Up, on or about March 31, 2006, the class members' pro-rata share of the
8 Net Asset Value of the company, as that term is defined in the Operating Agreement, and
9 according to Defendants' own publicly available accounting records, was \$9.60 per Unit. As
10 alleged above, Defendants failed to offer or pay any of the class members \$9.60 per Unit, and
11 instead Defendants converted the class members' Units into shares of Vestin Realty II
12 common stock, which began trading on the NASDAQ exchange on or about May 1, 2006.
13 Since Vestin Realty II's initial public offering on or about May 1, 2006, Vestin Realty II's
14 stock has traded in the range of approximately \$5.00 to \$7.00 per share, resulting in
15 substantial investment losses to all of the class members, who were entitled to a minimum of
16 \$9.60 per Unit on the date of the Roll-Up, pursuant to the express terms of the Operating
17 Agreement. Additionally, the average daily trading volume of Vestin Realty II stock is well
18 below 45,000 shares, making it extremely difficult for class members to liquidate their
19 investments.

20 36. The questions of law and fact at issue in this case are common to Plaintiffs
21 and all class members, and those questions predominate over any questions that may affect
22 individual members of the class. The common question of fact central to this class action is
23 whether the conversion and merger of Vestin Fund II, LLC, into Vestin Realty II on March
24 31, 2006, constituted a "Roll-Up", as that term is defined in the Vestin Fund II, LLC,
25 Operating Agreement. The common questions of law central to this class action include: (a)
26 whether Defendants breached a duty to offer and pay the class members their pro-rata share
27 of the appraised Net Asset Value of the Company; and (b) whether the class members are

1 | entitled to recover damages as a result of Defendants' breach.

2 37. Plaintiffs' claims will fairly and adequately represent and protect the interests
3 of the class. They have retained counsel with substantial experience in prosecuting public
4 investor lawsuits, and Plaintiffs and their counsel are committed to vigorously prosecuting
5 this action on behalf of the class and have the financial resources necessary to do so. Neither
6 Plaintiffs nor their counsel have any interest adverse to those of the class.

7 38. A class action is superior to all other available methods for the fair and
8 efficient adjudication of this controversy since individual joinder of all members of the class
9 is impracticable. Further, as the damages suffered by each individual member of the class
10 may be relatively small, the expense and burden of individual litigation would make it
11 difficult or impossible for individual members of the class to redress the wrongs done to
12 them. The conduct of this action as a class action presents fewer management difficulties
13 than multiple trials of identical factual issues, and conserves the resources of the parties and
14 the court system and protects the rights of each class member.

FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR BREACH OF CONTRACT)

17 39. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
18 1 through 38 above as if more fully set forth at length herein.

19 40. Plaintiffs, and all class members, entered into the Operating Agreement with
20 all Defendants. In accordance with Section 13.2 of the Operating Agreement, the Plaintiffs,
21 and all members of the class, voted against the proposed Roll-Up, and they reasonably
22 expected to exercise their "*Members' Rights in a Roll-Up*". As set forth above, the
23 "*Members' Rights in a Roll-Up*" provision of the Operating Agreement provided that each
24 member of the company who voted against the Roll-Up was entitled to receive cash in an
25 amount equal to his or her pro-rata share of the appraised Net Asset Value of the company.

26 41. By letter dated in or around February 2006, Defendants advised all Vestin
27 Fund II investors that the "*Members Rights in a Roll-Up*" section of the Operating Agreement

1 was unenforceable and did not apply to the merger of Vestin Fund II into Vestin Realty II.
2 Defendants failed and refused to explain how or why they arrived at this conclusion, and they
3 flatly refused to offer any of the class members a pro-rata share of the company's appraised
4 Net Asset Value. Defendants thereby breached the Operating Agreement.

5 42. As a result of Defendants' breach of the Operating Agreement, Plaintiffs and
6 all class members have suffered substantial damages in an amount to be proven at trial.

7 43. Plaintiffs are ready, willing and able to tender, and do hereby tender, all of
8 their shares of Vestin Realty II stock which they received from Defendants in connection with
9 the Roll-Up, in exchange for rescission and restoration of the consideration paid therefor,
10 with statutory interest from the date of the investment to the date of rescission.

SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING)

14 44. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
15 1 through 43 above as if more fully set forth at length herein.

16 45. Implicit in the Operating Agreement is a covenant by Defendants to act in
17 good faith and deal fairly with Plaintiffs and all Vestin Fund II investors.

18 46. As a result of the wrongful conduct, alleged above, Defendants breached their
19 implied covenant of good faith and fair dealing, and thereby proximately caused Plaintiffs,
20 and all members of the class, to sustain substantial investment losses and other damages in an
21 amount to be proven at trial.

THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR ELDER ABUSE)

25 47. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
1 through 46 above as if more fully set forth at length herein.

48. Many of the Plaintiffs and members of the class are senior citizens, pursuant
27 to California Civil Code § 1761, and other applicable States' laws.

1 49. As a result of the class members' age and condition, and inability to
2 comprehend the Operating Agreement and other terms of the Vestin Fund II investment, they
3 were substantially more vulnerable than other members of the public to financial abuse.
4 Defendants knew, or reasonably should have known, that the class members were entitled to
5 exercise their "*Members Rights in a Roll-Up*", pursuant to the express terms of the Operating
6 Agreement, pro-rata share of the company's appraised Net Asset Value. Defendants,
7 however, advised the class members, in bad faith, that the "*Members Rights in a Roll-Up*"
8 section of the Operating Agreement was unenforceable and did not apply to the merger of
9 Vestin Fund II into Vestin Realty II. Defendants thereby engaged in the financial abuse of
10 elders, with the intent and purpose to exploit their age and vulnerability.

11 50. Pursuant to California Welfare & Institution Code § 15657.5, and California
12 Civil Code § 3345, as well as other applicable States' Elder Abuse Statutes, the trier of fact
13 herein is authorized to award treble damages, reasonable attorneys fees, and costs of suit.

14

15 **PRAAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

17 (a) For certification of this action as a plaintiff class action as set forth herein,
18 pursuant to California Code of Civil Procedure § 382;

19 (b) For an award of compensatory damages in an amount to be proven at trial,
20 including prejudgment interest thereon;

21 (c) For an award of reasonable attorneys fees and costs incurred in this action as
22 permitted by law;

23 (d) For an award of punitive and exemplary damages in an amount appropriate to
24 punish and make an example of Defendants;

25 (e) For an award of treble damages pursuant to applicable States' Elder Abuse
26 Statutes; and

27 (f) Such other and further relief as the Court may deem just and proper.

28

1

2 **JURY TRIAL DEMANDED**

3 Plaintiffs, on behalf of themselves and all class members, hereby demand a trial by jury.

4

5 Respectfully Submitted,

6 Dated: October 12, 2006

SHUSTAK & PARTNERS, P.C.

7

8

By:



Erwin J. Shustak, Esq.

Thomas C. Frost, Esq.

John Cleary, Esq.

Attorneys for Plaintiffs

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II,
LLC, VESTIN MORTGAGE, INC., and DOES 1 through 50 inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

RICHARD GENTON; MARIO LOPEZ; CHARLES FELTON;
SHARON FELTON; MARY P. FELTON, TRUSTEE OF THE MARY
Additional Parties Attachment Form is attached

F1-117	SUM-100
FOR COURT USE ONLY 10 (SOLO PARA USO DE LA CORTE) CENTRAL DIVISION	
2006 NOV 13 P 411	
SAN DIEGO COURT SAN DIEGO, CA	

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Diego Superior Court, Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER: 873968
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Erwin Shustak, Esq. and Thomas Frost, Esq. (619-696-9500)
401 West A Street, Suite 2330, San Diego, CA 92101

DATE: NOV 13 2006 Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **Vestin Realty Mortgage II, Inc. (f/k/a) VESTIN FUND II, LLC.**

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

4. by personal delivery on (date):

SHORT TITLE: Richard Genton, et al. v. Vestin Realty Mortgage II, Inc., et al.	CASE NUMBER: 873968
---	-------------------------------

INSTRUCTIONS FOR USE

- ☛ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ☛ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party):

Plaintiff Defendant Cross-Complainant Cross-Defendant

P. FELTON TRUST, DATED 11/03/04; MARLOWE LANCASTER; SHIRLEY LANCASTER; RONALD LIGHTERINK; SHERON LIGHTERINK; LUIS GUERRERO; EMILIA GUERRERO; DANIEL DEL FRATE; MARION DEL FRATE; RALPH H. MCBRIDE; JANET S. ANGELOFF; THOMAS L. DUEPPEN; JOYCE B. DUEPPEN; JOEL E. JOBST; JOSEPH M. AMORIN; EMMET SJOBERG; MARY SJOBERG; MICHAEL E. COX; DERELL HARMON; DENISE HARMON; JOAN MILLER; DONALD MILLER; MAUREEN PROGAR; STAN PROGAR; JANE HALPERN; TODD E. STERLING; and ROES 1 through 5000, inclusive.

Page 1 of 1

Form Adopted by Form 982(u)(A)
Judicial Council of California
982(u)(A) (Rev. January 1, 1973)

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

American LegalNet, Inc.
www.USCourtForms.com

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II,
LLC, VESTIN MORTGAGE, INC., and DOES 1 through 50 inclusive.

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

RICHARD GENTON; MARIO LOPEZ; CHARLES FELTON;
SHARON FELTON; MARY P. FELTON, TRUSTEE OF THE MARY
Additional Parties Attachment Form is attached

SERIALIZED	SUM-100
CIVIL DIVISION SECTION 10 (SOLO PARA USO DE LA OFICINA)	
CENTRAL DIVISION	
DEPT OCT 13 P 4 11	
SAN DIEGO COURT SAN DIEGO, CA	

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumple con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court, Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER: 8733403
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Erwin Shustak, Esq. and Thomas Frost, Esq. (619-696-9500)

401 West A Street, Suite 2330, San Diego, CA 92101

DATE: Oct 12 2006 Clerk, by _____ Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

(SEAL)

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **Vestin Mortgage, Inc.**

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

4. by personal delivery on (date):

Page 1 of 1

SHORT TITLE: Richard Genton, et al. v. Vestin Realty Mortgage II, Inc., et al.	CASE NUMBER: 873966
---	-------------------------------

INSTRUCTIONS FOR USE

- ☞ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ☞ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party):

Plaintiff Defendant Cross-Complainant Cross-Defendant

P. FELTON TRUST, DATED 11/03/04; MARLOWE LANCASTER; SHIRLEY LANCASTER; RONALD LIGHTERINK; SHERON LIGHTERINK; LUIS GUERRERO; EMILIA GUERRERO; DANIEL DEL FRATE; MARION DEL FRATE; RALPH H. MCBRIDE,; JANET S. ANGELOFF; THOMAS L. DUEPPEN; JOYCE B. DUEPPEN; JOEL E. JOBST; JOSEPH M. AMORIN; EMMET SJOBERG; MARY SJOBERG; MICHAEL E. COX; DERELL HARMON; DENISE HARMON; JOAN MILLER; DONALD MILLER; MAUREEN PROGAR; STAN PROGAR; JANE HALPERN; TODD E. STERLING; and ROES 1 through 5000, inclusive.

Page 1 of 1

1 Erwin J. Shustak, Esq. (SBN 119152)
2 Thomas C. Frost, Esq. (SBN 185187)
3 John Cleary, Esq. (SBN 187821)
4 **SHUSTAK & PARTNERS, P.C.**
401 West "A" Street, Suite 2330
San Diego, California 92101
Telephone: (619) 696.9500
Facsimile: (619) 615-5290

~~RECEIVED
CIVIC DEFENSE OFFICE 11
NOV 1 1943~~

2006 NOV -9 P 4:16

**CLERK'S OFFICE
SAN MATEO COUNTY, CA**

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RICHARD G. GENTON, TRUSTEE OF
THE RICHARD G. GENTON LIVING
TRUST DATED 06/05/01; MARIO O.
LOPEZ AND ALICIA L. LOPEZ,
TRUSTEES OF THE LOPEZ FAMILY
TRUST DATED 12/14/88; CHARLES M.
FELTON AND SHARON D. FELTON,
TRUSTEES OF THE FELTON FAMILY
TRUST DATED 03/25/99; MARY P.
FELTON, TRUSTEE OF THE MARY P.
FELTON TRUST, DATED 11/03/04;
MARLOWE J. LANCASTER AND
SHIRLEY C. LANCASTER, TRUSTEES
OF THE LANCASTER FAMILY TRUST
DATED 06/27/90; RONALD
LIGHTERINK; SHERON LIGHTERINK;
LUIS G. GUERRERO AND EMILIA
GUERRERO, TRUSTEES OF THE
GUERRERO FAMILY TRUST DATED
12/19/96; DANIEL DEL FRATE AND
MARION DEL FRATE, TRUSTEES OF
THE DEL FRATE LIVING TRUST,
DATED 09/14/99; RALPH H. MCBRIDE,
TRUSTEE OF THE RALPH H. MCBRIDE
TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN;
JOYCE B. DUEPPEN; JOEL E. JOBST,
TRUSTEE OF THE JOBST FAMILY
TRUST DATED 06/17/94; JOSEPH M.
AMORIN; EMMET A. SJOBERG AND
MARY M. SJOBERG, TRUSTEES OF
THE EMMET A. AND MARY M.
SJOBERG TRUST, DATED 05/02/95;
MICHAEL E. COX; FRANCES COX;
DERELL L. HARMON; DENISE L.
HARMON; JOAN L. MILLER; DONALD

Case No.: GIC 873968

CLASS ACTION

**FIRST AMENDED COMPLAINT
AGAINST VESTIN REALTY
MORTGAGE II, INC., (f/k/a) VESTIN
FUND II, LLC, AND VESTIN
MORTGAGE, INC., FOR:**

1. BREACH OF CONTRACT;
 2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND
 3. ELDER ABUSE

Judge: Hon. Joan M. Lewis
Dept.: 65
Complaint filed: October 13, 2006
Trial date: None

1 G. MILLER; STAN J. PROGAR;
2 MAUREEN C. PROGAR; JANE
3 HALPERN; TODD E. STERLING; CLYDE
MERRITT; DARLENE MERRITT; and
ROES 1 through 5000, inclusive,

4 Plaintiffs,

5 vs.

6 VESTIN REALTY MORTGAGE II, INC.,
(f/k/a) VESTIN FUND II, LLC, VESTIN
7 MORTGAGE, INC., and DOES 1 through
50, Inclusive,

8 Defendants.
9 /

10 Plaintiffs, individually, and on behalf of all others similarly situated, allege the
11 following facts, based upon the investigation of Plaintiffs' counsel, which included, among
12 other things, witness interviews, a review of the Defendants' public documents, including
13 United States Securities and Exchange Commission ("SEC") filings, wire and press releases
14 published by and regarding Defendants, newspaper and other media reports, and information
15 readily obtainable on the Internet; Plaintiffs' counsel also reviewed Defendants'
16 correspondence with Plaintiffs, as well as the prospectuses, proxy statements, solicitation
17 letters, account opening documents, and agreements Defendants provided and entered into
18 with Plaintiffs:

19 **NATURE OF THE ACTION AND OVERVIEW**

20 1. This action is brought as a class action pursuant to California Code of Civil
Procedure Section 382, on behalf of all investors who satisfy both of the following criteria:
21 (1) the investors must have owned securities of Vestin Fund II, LLC, referred to as
investment "Units", at the time Vestin Fund II, LLC, merged with Vestin Realty Mortgage II,
22 Inc., on or about March 31, 2006 (the "Roll-Up"); and (2) the investors must have voted
23 against the Roll-Up of Vestin Fund II, LLC.

24 2. The Plaintiffs, individually, and on behalf of all class members, seek to pursue
remedies for Defendants' breach of the Vestin Fund II, LLC, Operating Agreement (the
25 "Operating Agreement"). The Operating Agreement specifically provided that, in the event
26

1 of a Roll-Up, Defendants must grant all investors who voted against the Roll-Up a pro-rata
2 share of the appraised net asset value of the company, but Defendants failed and refused to
3 pay all or any part of the amounts due to Plaintiffs, or to any of the class members, who all
4 voted against the Roll-Up.

5 **JURISDICTION AND VENUE**

6 3. Many of the acts and transactions alleged herein occurred in substantial part in
7 this Judicial District. Defendants entered into many of the agreements relating to this
8 dispute, including the Vestin Fund II, LLC, Operating Agreement, within this Judicial
9 District, and Defendants' alleged breach of the Vestin Fund II, LLC, Operating Agreement
10 occurred, in substantial part, within this Judicial District.

11 4. Defendants were licenced to conduct business, and actively conducted
12 business, within this Judicial District, at all relevant times, and Defendants maintained a
13 branch office in this Judicial District for purposes of servicing many of the class members'
14 investments in Vestin Fund II, LLC.

15 5. Plaintiffs, collectively, and on behalf of all others similarly situated, seek
16 damages in excess of the jurisdictional minimum of this Court.

17 **THE PARTIES**

18 6. Plaintiff RICHARD G. GENTON is an individual residing in Indian Wells,
19 California. Plaintiff RICHARD G. GENTON brings this action on his own behalf and in his
20 capacity as trustee of the RICHARD G. GENTON LIVING TRUST DATED 06/05/01.

21 7. Plaintiffs MARIO O. LOPEZ and ALICIA L. LOPEZ are individuals residing
22 in Long Beach, California. Plaintiffs MARIO O. LOPEZ and ALICIA L. LOPEZ bring this
23 action in their individual capacities and in their capacities as trustees of the LOPEZ FAMILY
24 TRUST DATED 12/14/88.

25 8. Plaintiffs CHARLES M. FELTON and SHARON D. FELTON are individuals
26 residing in Lodi, California. Plaintiffs CHARLES M. FELTON and SHARON D. FELTON
27 bring this action in their individual capacities and in their capacities as trustees of the

1 FELTON FAMILY TRUST DATED 03/25/99.

2 9. Plaintiff MARY P. FELTON is an individual residing in Lodi, California.

3 Plaintiff MARY P. FELTON brings this action on her own behalf and in her capacity as
4 trustee of the MARY P. FELTON TRUST DATED 11/03/04.

5 10. Plaintiffs MARLOWE LANCASTER and SHIRLEY LANCASTER are
6 individuals residing in Novato, California. Plaintiffs MARLOWE LANCASTER and
7 SHIRLEY LANCASTER bring this action in their individual capacities and in their
8 capacities as trustees of the LANCASTER FAMILY TRUST DATED 06/27/90.

9 11. Plaintiffs RONALD LIGHTERINK and SHERON LIGHTERINK are
10 individuals residing in La Quinta, California.

11 12. Plaintiffs LUIS GUERRERO and EMILIA GUERRERO are individuals
12 residing in Las Vegas, Nevada. Plaintiffs LUIS GUERRERO and EMILIA GUERRERO
13 bring this action in their individual capacities and in their capacities as trustees of the
14 GUERRERO FAMILY TRUST DATED 12/19/96.

15 13. Plaintiffs DANIEL DEL FRATE and MARION DEL FRATE are individuals
16 residing in Sparks, Nevada. Plaintiffs DANIEL DEL FRATE and MARION DEL FRATE
17 bring this action in their individual capacities and in their capacities as trustees of the DEL
18 FRATE LIVING TRUST DATED 09/14/99.

19 14. Plaintiff RALPH H. MCBRIDE is an individual residing in San Antonio,
20 Texas. Plaintiff RALPH H. MCBRIDE brings this action on his own behalf and in his
21 capacity as trustee of the RALPH H. MCBRIDE TRUST DATED 04/26/04.

22 15. Plaintiff JANET S. ANGELOFF is an individual residing in Marysville,
23 Washington.

24 16. Plaintiffs THOMAS L. DUEPPEN and JOYCE B. DUEPPEN are individuals
25 residing in Menomonee Falls, Wisconsin.

26 17. Plaintiff JOEL E. JOBST is an individual residing in Whitefish, Montana.
27 Plaintiff JOEL E. JOBST brings this action on his own behalf and in his capacity as trustee of
28 the JOBST FAMILY TRUST DATED 06/17/94.

1 18. Plaintiff JOSEPH M. AMORIN is an individual residing in Cranston, Rhode
2 Island.

3 19. Plaintiffs EMMET A. SJOBERG and MARY M. SJOBERG are individuals
4 residing in Oconomowoc, Wisconsin. Plaintiffs EMMET A. SJOBERG and MARY M.
5 SJOBERG bring this action in their individual capacities and in their capacities as trustees of
6 the EMMET A. AND MARY M. SJOBERG TRUST DATED 05/02/95.

7 20. Plaintiffs MICHAEL E. COX and FRANCES COX are individuals residing in
8 Las Vegas, Nevada.

9 21. Plaintiffs DERELL L. HARMON and DENISE L. HARMON are individuals
10 residing in Granbury, Texas.

11 22. Plaintiffs JOAN L. MILLER and DONALD G. MILLER are individuals
12 residing in Pittsford, New York.

13 23. Plaintiffs STAN J. PROGAR and MAUREEN C. PROGAR are individuals
14 residing in Henderson, Nevada.

15 24. Plaintiff JANE HALPERN is an individual residing in Albuquerque, New
16 Mexico.

17 25. Plaintiff TODD E. STERLING is an individual residing in Las Vegas,
18 Nevada.

19 26. Plaintiffs CLYDE MERRITT and DARLENE MERRITT are individuals
20 residing in Weatherford, Texas.

21 27. Defendant Vestin Fund II, LLC ("Vestin Fund II"), existed at all relevant
22 times as a Nevada limited liability company, with its principal place of business in Las
23 Vegas, Nevada. Vestin Fund II also maintained a branch office, at all relevant times, in La
24 Jolla, California. Vestin Fund II operated as an investment fund focused on mortgage loans,
25 and actively solicited investments and conducted business in San Diego, California, and in
26 various states across the country. On or about March 31, 2006, Vestin Fund II, LLC, merged
27 into a publicly traded real estate investment trust, Vestin Realty Mortgage II, a Maryland
28

1 corporation ("Vestin Realty II").

2 28. Defendant Vestin Realty II is a Maryland corporation with its principal place
3 of business in Las Vegas, Nevada. Vestin Realty II is the successor in interest to all
4 obligations, powers, duties, responsibilities, and interests of Vestin Fund II. Vestin Realty II
5 continues to actively solicit investments and conduct business in San Diego, California, and
6 in various states across the country, and its stock is publicly traded on the NASDAQ
7 Exchange.

8 29. Defendant Vestin Mortgage, Inc., is a Nevada corporation licensed in Nevada
9 as a mortgage broker ("Vestin Mortgage"). Vestin Mortgage is the manager of Vestin Realty
10 II, formerly known as Vestin Fund II, and also acts as Vestin Realty II's mortgage broker in
11 connection with most, if not all of the loans originated, purchased and sold by Vestin Realty
12 II.

13 30. Plaintiffs are currently unaware of the specific identities of the Defendants
14 named as DOES 1 through 50, inclusive. As soon as Plaintiffs become aware of more
15 specific information regarding these Defendants, Plaintiffs will promptly amend the
16 Complaint accordingly.

17 31. Upon information and belief, each Defendant was the agent, employee,
18 successor in interest, and alter ego each other Defendant, and in doing the acts as herein
19 alleged, was acting within the course and scope of its authority as such with the expressed
20 and implied permission, instruction, knowledge, consent, and ratification of each other
21 Defendant.

22 **CLASS ACTION ALLEGATIONS**

23 32. Plaintiffs bring this action in their individual capacities, and on behalf of all
24 persons similarly situated and damaged by Defendants' wrongful conduct alleged herein.
25 Such a representative action is necessary to prevent and remedy the unlawful conduct alleged
26 herein.

27 33. This action is brought and may be properly maintained as a class action

1 pursuant to the provisions of California Code of Civil Procedure § 382. Plaintiffs bring this
 2 action on behalf of themselves and all members of the class, defined as follows: all Vestin
 3 Fund II investors who voted against the "Roll-Up", whereby Vestin Fund II merged into
 4 Vestin Realty II, on or about March 31, 2006. Plaintiffs seek to pursue remedies for breach
 5 of contract, based on Defendants' failure and refusal to offer or pay the Plaintiffs their pro-
 6 rata share of the appraised net asset value of Vestin Fund II, pursuant to the Operating
 7 Agreement. Excluded from the proposed class are Defendants, any entities in which any of
 8 the Defendants has a controlling interest, and the officers, directors, affiliates, attorneys,
 9 heirs, predecessors and successors in interest, subsidiaries, employees, agents and/or assigns
 10 of any of the Defendants.

11 34. The members of the class are so numerous that joinder of all members is
 12 impracticable. While the exact number of class members is unknown to Plaintiffs at this time
 13 and can only be ascertained through discovery, Plaintiffs believe that there are at least 1000
 14 members of the proposed class.

15 35. There is a well-defined community of interest among the members of the
 16 proposed class. Plaintiffs, like all other members of the class, affirmatively voted against the
 17 Roll-Up of Vestin Fund II. The Operating Agreement expressly provided that in the event of
 18 a Roll-Up, each investor who voted against the Roll-Up was entitled to cash in an amount
 19 equal to his/her pro-rata share of the appraised net asset value of the company.¹ A true and
 20 correct copy of the Operating Agreement is attached hereto as Exhibit 1.

21 36. More specifically, Section 13.2 of the Operating Agreement provides, in
 22 relevant part:

23 "13.2 *Members' Rights in a Roll-Up.* If a Roll-Up is effected as to the
 24 Company, the Roll-Up Entity making the offer to the Company shall offer to
 25 each Member who votes against the Roll-Up...cash in an amount equal to the
 Member's pro-rata share of the appraised Net Asset Value of the Company."
 Exhibit 1, Operating Agreement § 13.2, at p. A-24-A25.

27 A "Roll-Up" is specifically defined in the Operating Agreement to include a merger
 28 or conversion of the company into a real estate investment trust, such as Vestin Realty II.
 Exhibit 1, Operating Agreement §§ 2.40-2.41, at pp. A-6, A-7.

1 Defendants, however, failed and refused to provide the members of the class all or any part of
2 the amounts due under the Operating Agreement. Instead, Defendants unilaterally converted
3 the class members' Units of Vestin Fund II into an equivalent number of shares of Vestin
4 Realty II common stock, although Defendants knew, or reasonably should have known, that
5 the conversion would result in substantial investment losses to the members of the class.

6 37. As a result of Defendants' wrongful conduct alleged herein, the class members
7 have all suffered the same or similar injury. Between June 2001 and March 2006, the class
8 members purchased Units of Vestin Fund II for between \$9.60 and \$10.00 per Unit. As of
9 the date of the Roll-Up, on or about March 31, 2006, the class members' pro-rata share of the
10 Net Asset Value of the company, as that term is defined in the Operating Agreement, and
11 according to Defendants' own publicly available accounting records, was \$9.60 per Unit. As
12 alleged above, Defendants failed to offer or pay any of the class members \$9.60 per Unit, and
13 instead Defendants converted the class members' Units into shares of Vestin Realty II
14 common stock, which began trading on the NASDAQ exchange on or about May 1, 2006.
15 Since Vestin Realty II's initial public offering on or about May 1, 2006, Vestin Realty II's
16 stock has traded in the range of approximately \$5.00 to \$7.00 per share, resulting in
17 substantial investment losses to all of the class members, who were entitled to a minimum of
18 \$9.60 per Unit on the date of the Roll-Up, pursuant to the express terms of the Operating
19 Agreement. Additionally, the average daily trading volume of Vestin Realty II stock is well
20 below 45,000 shares, making it extremely difficult for class members to liquidate their
21 investments.

22 38. The questions of law and fact at issue in this case are common to Plaintiffs
23 and all class members, and those questions predominate over any questions that may affect
24 individual members of the class. The common question of fact central to this class action is
25 whether the conversion and merger of Vestin Fund II, LLC, into Vestin Realty II on March
26 31, 2006, constituted a "Roll-Up", as that term is defined in the Vestin Fund II, LLC,
27 Operating Agreement. The common questions of law central to this class action include: (a)
28

whether Defendants breached a duty to offer and pay the class members their pro-rata share of the appraised Net Asset Value of the Company; and (b) whether the class members are entitled to recover damages as a result of Defendants' breach.

4 39. Plaintiffs' claims will fairly and adequately represent and protect the interests
5 of the class. They have retained counsel with substantial experience in prosecuting public
6 investor lawsuits, and Plaintiffs and their counsel are committed to vigorously prosecuting
7 this action on behalf of the class and have the financial resources necessary to do so. Neither
8 Plaintiffs nor their counsel have any interest adverse to those of the class.

9 40. A class action is superior to all other available methods for the fair and
10 efficient adjudication of this controversy since individual joinder of all members of the class
11 is impracticable. Further, as the damages suffered by each individual member of the class
12 may be relatively small, the expense and burden of individual litigation would make it
13 difficult or impossible for individual members of the class to redress the wrongs done to
14 them. The conduct of this action as a class action presents fewer management difficulties
15 than multiple trials of identical factual issues, and conserves the resources of the parties and
16 the court system and protects the rights of each class member.

FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR BREACH OF CONTRACT)

12 41. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
20 1 through 40 above as if more fully set forth at length herein.

42. Plaintiffs, and all class members, entered into the Operating Agreement with
22 all Defendants. In accordance with Section 13.2 of the Operating Agreement, the Plaintiffs,
23 and all members of the class, voted against the proposed Roll-Up, and they reasonably
24 expected to exercise their "*Members' Rights in a Roll-Up*". As set forth above, the
25 "*Members' Rights in a Roll-Up*" provision of the Operating Agreement provided that each
26 member of the company who voted against the Roll-Up was entitled to receive cash in an
27 amount equal to his or her pro-rata share of the appraised Net Asset Value of the company.

1 43. By letter dated in or around February 2006, Defendants advised all Vestin
2 Fund II investors that the “*Members Rights in a Roll-Up*” section of the Operating Agreement
3 was unenforceable and did not apply to the merger of Vestin Fund II into Vestin Realty II.
4 Defendants failed and refused to explain how or why they arrived at this conclusion, and they
5 flatly refused to offer any of the class members a pro-rata share of the company’s appraised
6 Net Asset Value. Defendants thereby breached the Operating Agreement.

7 44. As a result of Defendants' breach of the Operating Agreement, Plaintiffs and
8 all class members have suffered substantial damages in an amount to be proven at trial.

9 45. Plaintiffs are ready, willing and able to tender, and do hereby tender, all of
10 their shares of Vestin Realty II stock which they received from Defendants in connection with
11 the Roll-Up, in exchange for rescission and restoration of the consideration paid therefor,
12 with statutory interest from the date of the investment to the date of rescission.

SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING)

16 46. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
17 1 through 45 above as if more fully set forth at length herein.

18 47. Implicit in the Operating Agreement is a covenant by Defendants to act in
19 good faith and deal fairly with Plaintiffs and all Vestin Fund II investors.

20 48. As a result of the wrongful conduct, alleged above, Defendants breached their
21 implied covenant of good faith and fair dealing, and thereby proximately caused Plaintiffs,
22 and all members of the class, to sustain substantial investment losses and other damages in an
23 amount to be proven at trial.

THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR ELDER ABUSE)

27 49. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
1 through 48 above as if more fully set forth at length herein.

1 50. Many of the Plaintiffs and members of the class are senior citizens, pursuant
2 to California Civil Code § 1761, and other applicable States' laws.

3 51. As a result of the class members' age and condition, and inability to
4 comprehend the Operating Agreement and other terms of the Vestin Fund II investment, they
5 were substantially more vulnerable than other members of the public to financial abuse.
6 Defendants knew, or reasonably should have known, that the class members were entitled to
7 exercise their "*Members Rights in a Roll-Up*" and receive their pro-rata share of the
8 company's appraised Net Asset Value. Defendants, however, advised the class members, in
9 bad faith, that the "*Members Rights in a Roll-Up*" section of the Operating Agreement was
10 unenforceable and did not apply to the merger of Vestin Fund II into Vestin Realty II.
11 Defendants thereby engaged in the financial abuse of elders, with the intent and purpose to
12 exploit their age and vulnerability.

13 52. Pursuant to California Welfare & Institution Code § 15657.5, and California
14 Civil Code § 3345, as well as other applicable States' Elder Abuse Statutes, the trier of fact
15 herein is authorized to award treble damages, reasonable attorneys fees, and costs of suit.

16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

19 (a) For certification of this action as a plaintiff class action as set forth herein,
20 pursuant to California Code of Civil Procedure § 382;

21 (b) For an award of compensatory damages in an amount to be proven at trial,
22 including prejudgment interest thereon;

23 (c) For an award of reasonable attorneys fees and costs incurred in this action as
24 permitted by law;

25 (d) For an award of punitive and exemplary damages in an amount appropriate to
26 punish and make an example of Defendants;

27 (e) For an award of treble damages pursuant to applicable States' Elder Abuse

28

1 Statutes; and

2 (f) Such other and further relief as the Court may deem just and proper.

3

4 **JURY TRIAL DEMANDED**

5 Plaintiffs, on behalf of themselves and all class members, hereby demand a trial by jury.

6

7 Respectfully Submitted,

8 Dated: November 9, 2006

SHUSTAK & PARTNERS, P.C.

9
10 By:


Erwin J. Shustak, Esq.
Thomas C. Frost, Esq.
John Cleary, Esq.
Attorneys for Plaintiffs

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 SEAN T. PROSSER (CA SBN 163903)
2 SProsser@mofo.com
3 JAMES MANISCALCO (CA SBN 179386)
4 JManiscalco@mofo.com
5 MORRISON & FOERSTER LLP
6 555 West Fifth Street
7 Los Angeles, California 90013-1024
8 Telephone: 213.892.5200
Facsimile: 213.892.5454

9
10 Attorneys for Defendants
11 VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN
12 FUND II, LLC, and VESTIN MORTGAGE, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN DIEGO

16
17 RICHARD G. GENTON, TRUSTEE OF THE
18 RICHARD G. GENTON LIVING TRUST
19 DATED 06/05/01; MARIO O. LOPEZ AND
20 ALICIA L. LOPEZ, TRUSTEES OF THE
21 LOPEZ FAMILY TRUST DATED 12/14/88;
CHARLES M. FELTON AND SHARON D.
22 FELTON, TRUSTEES OF THE FELTON
FAMILY TRUST DATED 03/25/99; MARY P.
FELTON, TRUSTEE OF THE MARY P.
23 FELTON TRUST, DATED 11/03/04;
MARLOWE J. LANCASTER AND SHIRLEY C.
LANCASTER, TRUSTEES OF THE
24 LANCASTER FAMILY TRUST DATED
06/27/90; RONALD LIGHTERINK; SHERON
LIGHTERINK; LUIS G. GUERRERO AND
EMILIA GUERRERO, TRUSTEES OF THE
GUERRERO FAMILY TRUST DATED
25 12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
LIVING TRUST DATED 09/14/99; RALPH H.
MCBRIDE, TRUSTEE OF THE RALPH H.
26 MCBRIDE TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN; JOYCE
B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
THE JOBST FAMILY TRUST DATED
27 06/17/94; JOSEPH M. AMORIN; EMMET A.
SJOBERG AND MARY M. SJOBERG,
TRUSTEES OF THE EMMET A. AND MARY

28 Case No. GIC 873968

NOTICE TO CLERK OF
SAN DIEGO COUNTY
SUPERIOR COURT OF
REMOVAL TO FEDERAL
COURT BY DEFENDANTS
VESTIN REALTY MORTGAGE
II, INC. (F/K/A) VESTIN FUND II,
LLC, AND VESTIN MORTGAGE,
INC.

1 M. SJOBERG TRUST DATED 05/02/95;
2 MICHAEL E. COX; FRANCIS COX; DERELL
3 L. HARMON; DENISE L. HARMON; JOAN L.
4 MILLER; DONALD G. MILLER; STAN J.
5 PROGAR; MAUREEN C. PROGAR; JANE
6 HALPERN; TODD E. STERLING; CLYDE
7 MERRITT; DARLENE MERRITT; and ROES 1
8 through 5000, inclusive,
9
10

11 Plaintiffs,
12 v.
13

14 VESTIN REALTY MORTGAGE II, INC., (f/k/a)
15 VESTIN FUND II, LLC, VESTIN MORTGAGE,
16 INC., and DOES 1 through 50, Inclusive,
17

18 Defendants.
19

20 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

21 PLEASE TAKE NOTICE that on November 16, 2006, pursuant to 28 U.S.C. § 1446(d),
22 defendants VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II, LLC, VESTIN
23 MORTGAGE, INC. ("Vestin") filed a Notice of Removal in the offices of the Clerk of the United
24 States District Court for the Southern District of California. A copy of the Notice of Removal
25 (without exhibits) is attached hereto as Exhibit "A," and is served and filed herewith.

26 Section 1446(d) provides that this Court need take no further action with respect to this
27 case "unless and until the case is remanded."

28 Dated: November 16, 2006

SEAN T. PROSSER
JAMES P. MANISCALCO
MORRISON & FOERSTER LLP

29 By: James Maniscalco
30 James P. Maniscalco

31 Attorneys for Defendants
32 VESTIN REALTY MORTGAGE II, INC.,
33 (f/k/a) VESTIN FUND II, LLC, and VESTIN
34 MORTGAGE, INC.

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California 92130. I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on November 16, 2006, I served a copy of:

**NOTICE TO CLERK OF SAN DIEGO COUNTY SUPERIOR COURT OF
REMOVAL TO FEDERAL COURT**

- BY FACSIMILE [Code Civ. Proc sec. 1013(e)] by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number 213.892.5454 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

- BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

- BY OVERNIGHT DELIVERY** [Code Civ. Proc sec. 1013(d)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 555 West Fifth Street, Los Angeles, California 90013-1024 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

- 1 **BY PERSONAL SERVICE [Code Civ. Proc sec. 1011]** by placing a true copy
2 thereof enclosed in a sealed envelope addressed as follows for collection and
3 delivery at the mailroom of Morrison & Foerster LLP, causing personal delivery of
the document(s) listed above to the person(s) at the address(es) set forth below.

4 I am readily familiar with Morrison & Foerster LLP's practice for the collection and
5 processing of documents for hand delivery and know that in the ordinary course of
Morrison & Foerster LLP's business practice the document(s) described above will be
6 taken from Morrison & Foerster LLP's mailroom and hand delivered to the
document's addressee (or left with an employee or person in charge of the
7 addressee's office) on the same date that it is placed at Morrison & Foerster LLP's
mailroom.

- 8 **BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6]** by electronically
9 mailing a true and correct copy through Morrison & Foerster LLP's electronic mail
10 system to the e-mail address(s) set forth below, or as stated on the attached service
list per agreement in accordance with Code of Civil Procedure section 1010.6.

11 Attorneys for Plaintiffs

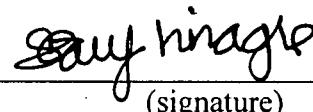
12 Erwin J. Shustak, Esq.
13 Thomas C. Frost, Esq.
14 John Cleary, Esq.
15 SHUSTAK & PARTNERS, P.C.
16 401 West "A" Street, Suite 2330
17 San Diego, CA 92101
18 Telephone: (619) 696-9500
19 Facsimile: (619) 615-5290

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed at San Diego, California, this 16th day of November, 2006.

23

Stacy Vinagre
24 (typed)

25 
(signature)

1 SEAN T. PROSSER (CA SBN 163903)
2 SProsser@mofo.com
3 JAMES MANISCALCO (CA SBN 179386)
4 JManiscalco@mofo.com
5 MORRISON & FOERSTER LLP
6 555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454

7 Attorneys for Defendants VESTIN REALTY
MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC,
8 and VESTIN MORTGAGE, INC.

9
10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 RICHARD G. GENTON, TRUSTEE OF THE
12 RICHARD G. GENTON LIVING TRUST
13 DATED 06/05/01; MARIO O. LOPEZ AND
14 ALICIA L. LOPEZ, TRUSTEES OF THE
LOPEZ FAMILY TRUST DATED 12/14/88;
CHARLES M. FELTON AND SHARON D.
15 FELTON, TRUSTEES OF THE FELTON
FAMILY TRUST DATED 03/25/99; MARY P.
FELTON, TRUSTEE OF THE MARY P.
16 FELTON TRUST, DATED 11/03/04;
MARLOWE J. LANCASTER AND SHIRLEY C.
17 LANCASTER, TRUSTEES OF THE
LANCASTER FAMILY TRUST DATED
06/27/90; RONALD LIGHTERINK; SHERON
18 LIGHTERINK; LUIS G. GUERRERO AND
EMILIA GUERRERO, TRUSTEES OF THE
GUERRERO FAMILY TRUST DATED
19 12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
LIVING TRUST DATED 09/14/99; RALPH H.
20 MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIE TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN; JOYCE
21 B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
THE JOBST FAMILY TRUST DATED
06/17/94; JOSEPH M. AMORIN; EMMET A.
22 SJOBERG AND MARY M. SJOBERG,
TRUSTEES OF THE EMMET A. AND MARY
23 M. SJOBERG TRUST DATED 05/02/95;

24 Case No.

25 **NOTICE OF REMOVAL**
PURSUANT TO 28 U.S.C. § 1441
BY DEFENDANTS VESTIN
REALTY MORTGAGE II, INC.
(F/K/A) VESTIN FUND II, LLC,
AND VESTIN MORTGAGE, INC.

1 MICHAEL E. COX; FRANCIS COX; DERELL
2 L. HARMON; DENISE L. HARMON; JOAN L.
3 MILLER; DONALD G. MILLER; STAN J.
4 PROGAR; MAUREEN C. PROGAR; JANE
5 HALPERN; TODD E. STERLING; CLYDE
6 MERRITT; DARLENE MERRITT; and ROES 1
7 through 5000, inclusive,
8
9

Plaintiffs,

v.

7 VESTIN REALTY MORTGAGE II, INC.,
8 (f/k/a) VESTIN FUND II, LLC, VESTIN
9 MORTGAGE, INC., and DOES 1 through 50,
Inclusive,

Defendants.

10
11 TO PLAINTIFFS, THEIR ATTORNEYS OF RECORD, AND THE CLERK OF
12 THE ABOVE-ENTITLED COURT:

13 PLEASE TAKE NOTICE that defendants VESTIN REALTY MORTGAGE
14 II, INC. (f/k/a) VESTIN FUND II, LLC, and VESTIN MORTGAGE, INC.
15 ("Vestin") hereby remove this action from the Superior Court of California, County
16 of San Diego to the United States District Court for the Central District of
17 California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 & 1453. The grounds for
18 removal are as follows:
19

20 **PROCEDURAL HISTORY**

21 1. On October 13, 2006, the above-captioned Plaintiffs filed a civil action
22 in the Superior Court of California for San Diego County, entitled *Genton v. Vestin*
23 *Realty Mortgage II, Inc.* (Case No. GIC 873968) (the "Superior Court Action"). A
24 true copy of the complaint in the Superior Court Action is attached as Exhibit "A."

25 2. On or about October 19, 2006, Plaintiffs served the Superior Court
26 Action on Vestin. True and correct copies of the summons received by Vestin are
27 attached as Exhibit "B."

3. On November 9, 2006, Plaintiffs filed their First Amended Complaint (“FAC”) in the above-entitled action. A true copy of the FAC is attached as Exhibit “C.”¹

TIMELINESS OF REMOVAL

4. Vestin first received formal notice of the Superior Court Action, through service of the summons and complaint on Vestin's registered agent for service of process, on October 19, 2006.

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), because it has been filed within 30 days of service upon Vestin of the summons and complaint.

VENUE IN THE SOUTHERN DISTRICT

6. Vestin files this Notice of Removal with the United States District Court for the Southern District of California because Plaintiffs allege that the Superior Court Action arose in the County of San Diego. (FAC ¶¶ 3-4, 27-28.)

BASIS FOR REMOVAL JURISDICTION

7. Generally. The Superior Court Action is removable to this Court pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b)) for at least the following reasons:

8. Covered Class Action. Plaintiffs purport to prosecute the Superior Court Action on behalf of a class of “all Vestin Fund II investors who voted against the ‘Roll-Up’, whereby Vestin Fund II merged into Vestin Realty II.” (FAC ¶ 33.) Plaintiffs allege that “there are at least 1000 members of the proposed class.” (FAC ¶ 34.) See 28 U.S.C. §§ 1332(d)(1) & (2), 1453(a) & (b).

9. Diversity. The Superior Court Action satisfies the minimum diversity requirements of CAFA, 28 U.S.C. § 1332(d)(2)(A), for the following reasons:

¹ As of the date of this filing, Defendants had not yet been served with the FAC.

1 a. Defendant Vestin Realty Mortgage II, Inc. (f/k/a) Vestin Fund
 2 II, LLC ("Vestin Realty Mortgage II") is a publicly traded real estate investment
 3 trust. It is a corporation organized and existing under the laws of the State of
 4 Maryland with its principal place of business located in Las Vegas, Nevada.

5 b. Defendant Vestin Mortgage, Inc. is a corporation organized and
 6 existing under the laws of the State of Nevada and is licensed there as a mortgage
 7 broker.

8 c. Plaintiffs allege that the individual members of the purported
 9 class are residents of California, Nevada, Texas, Washington, Wisconsin, Montana,
 10 Rhode Island, New York, and New Mexico. (FAC ¶¶ 6-26.)

11 10. Matter in Controversy. This amount in controversy of this action
 12 exceeds \$5,000,000 and thereby satisfies the minimum amount in controversy for
 13 removal under 28 U.S.C. § 1332(d)(2). Plaintiffs allege that they suffered
 14 "substantial investment losses" (FAC ¶ 37) and have brought causes of action for
 15 breach of contract, breach of the implied covenant of good faith and fair dealing,
 16 and elder abuse pursuant to California Civil Code § 1761. (FAC ¶¶ 41-52.) While
 17 Plaintiffs do not explicitly alleged the value of the matter in controversy, they are
 18 seeking compensatory damages, punitive and exemplary damages (including treble
 19 damages for elder abuse) and attorneys' fees as a result of their investment losses
 20 and resulting harm. (*Id.*) A fair reading of the FAC demonstrates that the amount in
 21 controversy exceeds the jurisdictional minimum for removal.

22 11. No CAFA Exclusions. The Superior Court Action does not fall within
 23 any of the exclusions to the removal jurisdiction recognized by 28 U.S.C. § 1332(d)
 24 because Vestin is not a citizen of California, the state in which the Superior Court
 25 Action was originally filed.

26 ///

27 ///

28

NOTICE PROVIDED TO STATE COURT AND ADVERSE PARTIES

12. Vestin is filing, on the date of this Notice, a copy of this Notice of Removal in the Superior Court of California, County of San Diego and will provide written notice of this Notice of Removal to Plaintiffs, as required by 28 U.S.C. §§ 1446(d) & 1453(b). True and correct copies of the Notice to the Clerk of San Diego County Superior Court of Removal to Federal Court (without exhibits) and the Notice to Plaintiffs of Removal to Federal Court (without exhibits) that will be filed with the San Diego County Superior Court are attached hereto as Exhibits "D" and "E."

13. In filing this Notice of Removal, Vestin does not waive any defenses that may be available to it in this action.

CONCLUSION

14. Vestin respectfully requests that this Court exercise subject matter jurisdiction over the Superior Court Action; enter such orders and grant relief as may be necessary to secure removal and to prevent further proceedings in the Superior Court of California, County of San Diego; and grant to Vestin such further relief as is necessary to secure this Court's jurisdiction.

Dated: November 16, 2006

SEAN T. PROSSER
JAMES P. MANISCALCO
MORRISON & FOERSTER LLP

By: James P. Maniscalco by KSL
James P. Maniscalco

Attorneys for Defendants
VESTIN REALTY MORTGAGE II,
INC., (f/k/a) VESTIN FUND II, LLC,
and VESTIN MORTGAGE, INC.

CERTIFICATE OF SERVICE BY MAIL
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California 92130; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441 BY DEFENDANTS
VESTIN REALTY MORTGAGE II, INC. (F/K/A) VESTIN FUND II, LLC, AND
VESTIN MORTGAGE, INC.**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130, in accordance with Morrison & Foerster's ordinary business practices:

Attorneys for Plaintiffs

Erwin J. Shustak, Esq.
Thomas C. Frost, Esq.
John Cleary, Esq.
SHUSTAK & PARTNERS, P.C.
401 West "A" Street, Suite 2330
San Diego, CA 92101
Telephone: (619) 696-9500
Facsimile: (619) 615-5290

I declare under penalty of perjury that the above is true and correct.

Executed at San Diego, California, this 16th day of November, 2006.

Stacy Vinagre
(typed)

Say Wmgo
(signature)

1 SEAN T. PROSSER (CA SBN 163903)
2 SProsser@mofo.com
3 JAMES MANISCALCO (CA SBN 179386)
4 JManiscalco@mofo.com
MORRISON & FOERSTER LLP
5 555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454

7 Attorneys for Defendants
VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN
8 FUND II, LLC, and VESTIN MORTGAGE, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

12 RICHARD G. GENTON, TRUSTEE OF THE
13 RICHARD G. GENTON LIVING TRUST
14 DATED 06/05/01; MARIO O. LOPEZ AND
15 ALICIA L. LOPEZ, TRUSTEES OF THE
LOPEZ FAMILY TRUST DATED 12/14/88;
CHARLES M. FELTON AND SHARON D.
16 FELTON, TRUSTEES OF THE FELTON
FAMILY TRUST DATED 03/25/99; MARY
P. FELTON, TRUSTEE OF THE MARY P.
17 FELTON TRUST, DATED 11/03/04;
MARLOWE J. LANCASTER AND
18 SHIRLEY C. LANCASTER, TRUSTEES OF
THE LANCASTER FAMILY TRUST
19 DATED 06/27/90; RONALD LIGHTERINK;
SHERON LIGHTERINK; LUIS G.
20 GUERRERO AND EMILIA GUERRERO,
TRUSTEES OF THE GUERRERO FAMILY
21 TRUST DATED 12/19/96; DANIEL DEL
FRATE AND MARION DEL FRATE,
22 TRUSTEES OF THE DEL FRATE LIVING
TRUST DATED 09/14/99; RALPH H.
23 MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIE TRUST DATED 04/26/04;
JANET S. ANGELOFF; THOMAS L.
24 DUEPPEN; JOYCE B. DUEPPEN; JOEL E.
JOBST, TRUSTEE OF THE JOBST
25 FAMILY TRUST DATED 06/17/94;
JOSEPH M. AMORIN; EMMET A.
26
27
28

Case No. GIC 873968

**NOTICE TO PLAINTIFFS
OF REMOVAL TO FEDERAL
COURT BY DEFENDANTS
VESTIN REALTY MORTGAGE
II, INC. (F/K/A) VESTIN FUND II,
LLC, AND VESTIN MORTGAGE,
INC.**

1 SJOBERG AND MARY M. SJOBERG,
2 TRUSTEES OF THE EMMET A. AND
3 MARY M. SJOBERG TRUST DATED
4 05/02/95; MICHAEL E. COX; FRANCIS
5 COX; DERELL L. HARMON; DENISE L.
6 HARMON; JOAN L. MILLER; DONALD G.
7 MILLER; STAN J. PROGAR; MAUREEN C.
8 PROGAR; JANE HALPERN; TODD E.
9 STERLING; CLYDE MERRITT; DARLENE
10 MERRITT; and ROES 1 through 5000,
11 inclusive,

12 Plaintiffs,

13 v.

14 VESTIN REALTY MORTGAGE II, INC., (f/k/a)
15 VESTIN FUND II, LLC, VESTIN MORTGAGE,
16 INC., and DOES 1 through 50, Inclusive,

17 Defendants.

18

19 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that, on November 16, 2006, pursuant to 28 U.S.C. § 1446(d),
21 Defendants VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II, LLC, and
22 VESTIN MORTGAGE, INC. ("Vestin") filed a Notice of Removal in the offices of the Clerk of
23 the United States District Court for the Southern District of California. A true and correct copy of
24 said Notice of Removal (without exhibits) is attached hereto as Exhibit "A" and is served and
25 filed herewith.

26 Dated: November 16, 2006

27 SEAN T. PROSSER
JAMES P. MANISCALCO
MORRISON & FOERSTER LLP

28

By: James Maniscalco
James P. Maniscalco

29

30 Attorneys for Defendants
VESTIN REALTY MORTGAGE II, INC.
31 (f/k/a) VESTIN FUND II, LLC, and VESTIN
32 MORTGAGE, INC.

33

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, Suite 100, San Diego, California 92130. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on November 16, 2006, I served a copy of:

NOTICE TO PLAINTIFFS OF REMOVAL TO FEDERAL COURT

- BY FACSIMILE [Code Civ. Proc sec. 1013(e)] by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number 213.892.5454 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

- BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

- BY OVERNIGHT DELIVERY** [Code Civ. Proc sec. 1013(d)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 555 West Fifth Street, Los Angeles, California 90013-1024 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

- 1 **BY PERSONAL SERVICE [Code Civ. Proc sec. 1011]** by placing a true copy
2 thereof enclosed in a sealed envelope addressed as follows for collection and
3 delivery at the mailroom of Morrison & Foerster LLP, causing personal delivery of
the document(s) listed above to the person(s) at the address(es) set forth below.

4 I am readily familiar with Morrison & Foerster LLP's practice for the collection and
5 processing of documents for hand delivery and know that in the ordinary course of
Morrison & Foerster LLP's business practice the document(s) described above will be
6 taken from Morrison & Foerster LLP's mailroom and hand delivered to the
document's addressee (or left with an employee or person in charge of the
7 addressee's office) on the same date that it is placed at Morrison & Foerster LLP's
mailroom.

- 8 **BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6]** by electronically
9 mailing a true and correct copy through Morrison & Foerster LLP's electronic mail
10 system to the e-mail address(s) set forth below, or as stated on the attached service
list per agreement in accordance with Code of Civil Procedure section 1010.6.

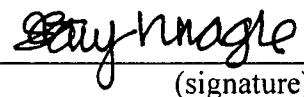
11 Attorneys for Plaintiffs

12 Erwin J. Shustak, Esq.
13 Thomas C. Frost, Esq.
14 John Cleary, Esq.
15 SHUSTAK & PARTNERS, P.C.
16 401 West "A" Street, Suite 2330
San Diego, CA 92101
Telephone: (619) 696-9500
Facsimile: (619) 615-5290

17 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.
18

19 Executed at San Diego, California, this 16th day of November, 2006.

20
21 Stacy Vinagre
22 (typed)


(signature)

1 SEAN T. PROSSER (CA SBN 163903)
2 SProsser@mofo.com
3 JAMES MANISCALCO (CA SBN 179386)
4 JManiscalco@mofo.com
MORRISON & FOERSTER LLP
5 555 West Fifth Street
Los Angeles, California 90013-1024
6 Telephone: 213.892.5200
Facsimile: 213.892.5454

7 Attorneys for Defendants VESTIN REALTY
8 MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC,
and VESTIN MORTGAGE, INC.

9
10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 RICHARD G. GENTON, TRUSTEE OF THE
12 RICHARD G. GENTON LIVING TRUST
13 DATED 06/05/01; MARIO O. LOPEZ AND
14 ALICIA L. LOPEZ, TRUSTEES OF THE
LOPEZ FAMILY TRUST DATED 12/14/88;
15 CHARLES M. FELTON AND SHARON D.
FELTON, TRUSTEES OF THE FELTON
16 FAMILY TRUST DATED 03/25/99; MARY P.
FELTON, TRUSTEE OF THE MARY P.
17 FELTON TRUST, DATED 11/03/04;
MARLOWE J. LANCASTER AND SHIRLEY C.
18 LANCASTER, TRUSTEES OF THE
LANCASTER FAMILY TRUST DATED
19 06/27/90; RONALD LIGHTERINK; SHERON
LIGHTERINK; LUIS G. GUERRERO AND
20 EMILIA GUERRERO, TRUSTEES OF THE
GUERRERO FAMILY TRUST DATED
21 12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
LIVING TRUST DATED 09/14/99; RALPH H.
22 MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIE TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN; JOYCE
23 B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
THE JOBST FAMILY TRUST DATED
24 06/17/94; JOSEPH M. AMORIN; EMMET A.
SJOBERG AND MARY M. SJOBERG,
25 TRUSTEES OF THE EMMET A. AND MARY
M. SJOBERG TRUST DATED 05/02/95;

Case No.

**NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. § 1441
BY DEFENDANTS VESTIN
REALTY MORTGAGE II, INC.
(F/K/A) VESTIN FUND II, LLC,
AND VESTIN MORTGAGE, INC.**

1 MICHAEL E. COX; FRANCIS COX; DERELL
2 L. HARMON; DENISE L. HARMON; JOAN L.
3 MILLER; DONALD G. MILLER; STAN J.
4 PROGAR; MAUREEN C. PROGAR; JANE
5 HALPERN; TODD E. STERLING; CLYDE
6 MERRITT; DARLENE MERRITT; and ROES 1
7 through 5000, inclusive,
8
9

Plaintiffs,

v.

7 VESTIN REALTY MORTGAGE II, INC.,
8 (f/k/a) VESTIN FUND II, LLC, VESTIN
9 MORTGAGE, INC., and DOES 1 through 50,
Inclusive,

Defendants.

10
11 TO PLAINTIFFS, THEIR ATTORNEYS OF RECORD, AND THE CLERK OF
12 THE ABOVE-ENTITLED COURT:

13 PLEASE TAKE NOTICE that defendants VESTIN REALTY MORTGAGE
14 II, INC. (f/k/a) VESTIN FUND II, LLC, and VESTIN MORTGAGE, INC.
15 ("Vestin") hereby remove this action from the Superior Court of California, County
16 of San Diego to the United States District Court for the Central District of
17 California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 & 1453. The grounds for
18 removal are as follows:
19

20 **PROCEDURAL HISTORY**

21 1. On October 13, 2006, the above-captioned Plaintiffs filed a civil action
22 in the Superior Court of California for San Diego County, entitled *Genton v. Vestin*
23 *Realty Mortgage II, Inc.* (Case No. GIC 873968) (the "Superior Court Action"). A
24 true copy of the complaint in the Superior Court Action is attached as Exhibit "A."

25 2. On or about October 19, 2006, Plaintiffs served the Superior Court
26 Action on Vestin. True and correct copies of the summons received by Vestin are
27 attached as Exhibit "B."

3. On November 9, 2006, Plaintiffs filed their First Amended Complaint (“FAC”) in the above-entitled action. A true copy of the FAC is attached as Exhibit “C.”¹

TIMELINESS OF REMOVAL

4. Vestin first received formal notice of the Superior Court Action, through service of the summons and complaint on Vestin's registered agent for service of process, on October 19, 2006.

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), because it has been filed within 30 days of service upon Vestin of the summons and complaint.

VENUE IN THE SOUTHERN DISTRICT

6. Vestin files this Notice of Removal with the United States District Court for the Southern District of California because Plaintiffs allege that the Superior Court Action arose in the County of San Diego. (FAC ¶¶ 3-4, 27-28.)

BASIS FOR REMOVAL, JURISDICTION

7. Generally. The Superior Court Action is removable to this Court pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b)) for at least the following reasons:

8. Covered Class Action. Plaintiffs purport to prosecute the Superior Court Action on behalf of a class of “all Vestin Fund II investors who voted against the ‘Roll-Up’, whereby Vestin Fund II merged into Vestin Realty II.” (FAC ¶ 33.) Plaintiffs allege that “there are at least 1000 members of the proposed class.” (FAC ¶ 34.) See 28 U.S.C. §§ 1332(d)(1) & (2), 1453(a) & (b).

9. Diversity. The Superior Court Action satisfies the minimum diversity requirements of CAFA, 28 U.S.C. § 1332(d)(2)(A), for the following reasons:

¹ As of the date of this filing, Defendants had not yet been served with the FAC.

1 a. Defendant Vestin Realty Mortgage II, Inc. (f/k/a) Vestin Fund
2 II, LLC ("Vestin Realty Mortgage II") is a publicly traded real estate investment
3 trust. It is a corporation organized and existing under the laws of the State of
4 Maryland with its principal place of business located in Las Vegas, Nevada.

5 b. Defendant Vestin Mortgage, Inc. is a corporation organized and
6 existing under the laws of the State of Nevada and is licensed there as a mortgage
7 broker.

8 c. Plaintiffs allege that the individual members of the purported
9 class are residents of California, Nevada, Texas, Washington, Wisconsin, Montana,
10 Rhode Island, New York, and New Mexico. (FAC ¶¶ 6-26.)

11 10. Matter in Controversy. This amount in controversy of this action
12 exceeds \$5,000,000 and thereby satisfies the minimum amount in controversy for
13 removal under 28 U.S.C. § 1332(d)(2). Plaintiffs allege that they suffered
14 "substantial investment losses" (FAC ¶ 37) and have brought causes of action for
15 breach of contract, breach of the implied covenant of good faith and fair dealing,
16 and elder abuse pursuant to California Civil Code § 1761. (FAC ¶¶ 41-52.) While
17 Plaintiffs do not explicitly alleged the value of the matter in controversy, they are
18 seeking compensatory damages, punitive and exemplary damages (including treble
19 damages for elder abuse) and attorneys' fees as a result of their investment losses
20 and resulting harm. (*Id.*) A fair reading of the FAC demonstrates that the amount in
21 controversy exceeds the jurisdictional minimum for removal.

22 11. No CAFA Exclusions. The Superior Court Action does not fall within
23 any of the exclusions to the removal jurisdiction recognized by 28 U.S.C. § 1332(d)
24 because Vestin is not a citizen of California, the state in which the Superior Court
25 Action was originally filed.

26 ///

27 ///

1 **NOTICE PROVIDED TO STATE COURT AND ADVERSE PARTIES**

2 12. Vestin is filing, on the date of this Notice, a copy of this Notice of
3 Removal in the Superior Court of California, County of San Diego and will provide
4 written notice of this Notice of Removal to Plaintiffs, as required by 28 U.S.C.
5 §§ 1446(d) & 1453(b). True and correct copies of the Notice to the Clerk of San
6 Diego County Superior Court of Removal to Federal Court (without exhibits) and
7 the Notice to Plaintiffs of Removal to Federal Court (without exhibits) that will be
8 filed with the San Diego County Superior Court are attached hereto as Exhibits "D"
9 and "E."

10 13. In filing this Notice of Removal, Vestin does not waive any defenses
11 that may be available to it in this action.

12 **CONCLUSION**

13 14. Vestin respectfully requests that this Court exercise subject matter
14 jurisdiction over the Superior Court Action; enter such orders and grant relief as
15 may be necessary to secure removal and to prevent further proceedings in the
16 Superior Court of California, County of San Diego; and grant to Vestin such further
17 relief as is necessary to secure this Court's jurisdiction.

18 Dated: November 16, 2006

19 SEAN T. PROSSER
20 JAMES P. MANISCALCO
21 MORRISON & FOERSTER LLP

22 By: *James P. Maniscalco by KSB*
23 James P. Maniscalco

24 Attorneys for Defendants
25 VESTIN REALTY MORTGAGE II,
26 INC., (f/k/a) VESTIN FUND II, LLC,
27 and VESTIN MORTGAGE, INC.

CERTIFICATE OF SERVICE BY MAIL
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California 92130; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441 BY DEFENDANTS
VESTIN REALTY MORTGAGE II, INC. (F/K/A) VESTIN FUND II, LLC, AND
VESTIN MORTGAGE, INC.**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130, in accordance with Morrison & Foerster's ordinary business practices:

Attorneys for Plaintiffs

Erwin J. Shustak, Esq.
Thomas C. Frost, Esq.
John Cleary, Esq.
SHUSTAK & PARTNERS, P.C.
401 West "A" Street, Suite 2330
San Diego, CA 92101
Telephone: (619) 696-9500
Facsimile: (619) 615-5290

I declare under penalty of perjury that the above is true and correct.

Executed at San Diego, California, this 16th day of November, 2006.

Stacy Vinagre
(typed)

Sayinag
(signature)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

RICHARD G. GENTON, TRUSTEE OF THE RICHARD G. GENTON LIVING TRUST DATED 06/05/01; MARIO O. LOPEZ AND ALICIA L. LOPEZ, TRUSTEES OF THE LOPEZ FAMILY TRUST DATED 12/14/88; CHARLES M. FELTON AND SHARON D. FELTON, TRUSTEES OF THE FELTON FAMILY TRUST DATED 03/25/99; MARY P. FELTON, TRUSTEE OF THE MARY P. FELTON TRUST, DATED 11/03/04; MARLOWE J. LANCASTER AND SHIRLEY C. LANCASTER, TRUSTEES OF THE LANCASTER FAMILY TRUST DATED 06/27/90; RONALD LIGHTERINK; SHERON LIGHTERINK; LUIS G. GUERRERO AND EMILIA GUERRERO, TRUSTEES OF THE GUERRERO FAMILY TRUST DATED 12/19/96; DANIEL DEL FRATE AND MARION DEL FRATE, TRUSTEES OF THE DEL FRATE LIVING TRUST DATED 09/14/99; RALPH H. MCBRIDE, TRUSTEE OF THE RALPH H. MCBRIDE TRUST DATED 04/26/04; JANET S. ANGELOFF; THOMAS L. DUEPPEN; JOYCE B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF THE JOBST FAMILY TRUST DATED 06/17/94; JOSEPH M. AMORIN; EMMET A. SJOBERG AND MARY M. SJOBERG, TRUSTEES OF THE EMMET A. AND MARY M. SJOBERG TRUST DATED 05/02/95; MICHAEL E. COX; FRANCIS COX; DERELL L. HARMON; DENISE L. HARMON; JOAN L. MILLER; DONALD G. MILLER; STAN J. PROGAR; MAUREEN C. PROGAR; JANE HALPERN; TODD E. STERLING; CLYDE MERRITT; DARLENE MERRITT; and ROES 1 through 5000, inclusive,

DEFENDANTS

VESTIN REALTY MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC, VESTIN MORTGAGE, INC. Land DOES 1 through 50, Inclusive,

06 NOV 16 2006

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

'06 CV 2517

BEN WMC

(b) County of Residence of First Listed Plaintiff RIVERSIDE
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Clark County, NV

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Sean T. Prosser, Esq.

SProsser@mofo.com

James Maniscalco, Esq.

JManiscalco@mofo.com

MORRISON & FOERSTER LLP

555 West Fifth Street, Suite 3500

Los Angeles, California 90013-1024

Telephone: (213) 892-5200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input checked="" type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise					12 USC 3410
					<input type="checkbox"/> 890 Other Statutory Actions
					<input type="checkbox"/> 891 Agricultural Acts

131815 Ser 11/16/106 \$350

REAL PROPERTY	CIVIL RIGHTS		PRISONER PETITIONS		FEDERAL TAX SUITS	
	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Labor Mgmt Reporting & Disclosure Act		
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability			<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property			<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

1 Original 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 another district (specify) 6 Multidistrict Litigation 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332(d) and 1453(b)

Brief description of cause:

Breach of contract for failure to pay class members pro-rata share of appraised net value of company.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION **DEMAND \$** **CHECK YES only if demanded in complaint:** **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): **JUDGE Kathy Hardcastle** **DOCKET NUMBER A528385 (Clark County, NV)**

DATE **November 16, 2006** SIGNATURE OF ATTORNEY OF RECORD
FOR OFFICE USE ONLY **James P. Maniscalco** *James Maniscalco by KSC*

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

131815 - A1
November 16, 2006

Code	Case #	Qty	Amount
CV086900.3-06-CV-2517			60.00 CH
Judge	- BENETIZ		
CV086400			100.00 CH
CV510000			190.00 CH
Total ->			350.00

FROM: CIVIL FILING
GENTON ET AL V. VESTIN REALTY
MORTGAGE II, INC ET AL
BCH 031624 SH